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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,358	03/31/2004	Edward K. Y. Jung	SEI-0013-US	1749
80118 7590 11/02/2009 Constellation Law Group, PLLC P.O. Box 220 Tracyton, WA 98393				
EXAMINER				
SURVILLO, OLEG				
ART UNIT		PAPER NUMBER		
2442				
MAIL DATE		DELIVERY MODE		
11/02/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/816,358

Applicant(s)

JUNG ET AL.

Examiner

OLEG SURVILLO

Art Unit

2442

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-39.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 08/28/09
13. ☐ Other: _____.

/Asad M Nawaz/
Primary Examiner, Art Unit 2455

Continuation of 3.(a) NOTE: As to proposed amendment to claim 32, this amendment would change the scope of the invention and would necessitate further consideration. In particular, proposed replacement of "migrating" with "transferring" would require further consideration to determine whether the scope of "migrating" and "transferring" is the same or different.

Continuation of 4.: Claim 34 has the word "index" underlined as if it has been newly added. However, the claim already recites "at least one multi-note index creation agent", as previously presented. Therefore, proposed addition of "index" is ambiguous and improper. It is further noted that claim status is listed as Previously Presented.

Continuation of 13. Other: Regarding applicant's amendment to claim 39 to remove questionable limitation, such amendment would overcome the previously made 35 U.S.C. 112, second paragraph rejection of claim 39, as proposed, since the limitation of "content stored on the second mote" is no longer claimed.

Regarding the rejection of claim 1, applicant argues at point 1) that "Examiner has ignored several express recitations of Independent claim 1 in his analysis. Applicant further argues at point 2) that "Examiner is interpreting Mulgund to "teach" at least a portion of the text of Independent claim 1 but has not provided any objectively verifiable evidence supporting his interpretation".

In response to argument at point 1), it is noted that all the claimed limitations have been shown to be taught the reference, as shown in the reasons for rejection at pages 9-10 of the last Office action. Furthermore, it is noted that applicant's argument at point 1) has been already addressed by examiner at pages 2-3 of the last Office action. Applicants are advised to carefully review examiner's response at pages 2-5 of the last Office action, and avoid, in their future responses, repeating arguments that were previously addressed by examiner.

In response to argument at point 2), it is noted that applicants failed to provide statutes, regulations, or sections of MPEP that would require the examiner to provide objectively verifiable evidence, or argument based on objectively verifiable evidence, as to why Mulgund teaches the limitations it was relied on to teach, as discussed at page 4 of the last Office action. It is noted again that applicants are advised to avoid, in their future responses, repeating previously made arguments and completely ignoring examiner's response to those previously made arguments. In response to applicant copy-pasting numerous paragraphs and figures of the applied reference(s) in the reply and providing absolutely no interpretation and/or analysis of those paragraphs and figures, it appears that such approach serves no purpose apart from making it difficult for examiner to locate applicant's argument, if such had been made. Therefore, applicant is encouraged to minimize copy-pasting of portions of applied references in their response to only those portions specifically analyzed and/or interpreted by applicants in their argument.

Applicant argues at point 3) that "dependent claims 9, 12, 14, and 15 are patentable because rejection is based on improper 103(a) reference". In response to argument at point 3), it is maintained that rejection of claims 9, 12, 14, and 15 is proper because at least claim 32 of the provisional application to Kung supports cited paragraph in the non-provisional application to Kung. Therefore, Kung and its provisional application is a proper reference.

Applicant argues at point 4) that "Examiner interpretation appears to be based on inadvertent impermissible hindsight, personal knowledge, or official notice; applicant request issuance of notice of allowability". In response to argument at point 4), it is noted that each and every element as set forth in the claim is found, either explicitly or inherently described, in a single prior art reference. Therefore, taking official notice of facts not in the record or relying on "common knowledge" in making a rejection by the examiner is not appropriate as was not taken/relied on. Thus, applicants' reliance on MPEP section 2144.03(c) is misplaced.

Applicant argues at point 5) that "the Examiner-suggested modifications of the teachings of Mulgund and Madden to meet the recitations of claim 34 change the principle of operation of prior art components being modified, and/or render the prior art components unfit for their intended purpose". In response to argument at point 5), Examiner disagrees. Teachings of Madden improve on the server-based approach of Mulgund by having aggregations computed in-network in order to reduce the number of message transmissions, latency, and power consumption comparing to the server-based approach. However, teachings of Madden do not alter the principle of operation of Mulgund since the aggregation of sensor readings is still performed as the end result and the Network Modeling Agent of Mulgund is still utilized in order to log the sensor readings in the central database at the server device. Therefore, even if modified with teachings of Madden, Mulgund is still fit for its intended purpose, that is aggregating the state of an ad hoc network into a relational database (abstract of Mulgund). Thus, applicant's argument cannot be held as persuasive.

Applicant argues at point 6) that "canceled claims were and continue to be a part of the original and/or present patent application(s)"

In response to argument at point 6), applicants are requested to point out specifically which canceled claims applicants refer to. As to any arguments not specifically addressed, they are the same as those discussed above.